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Attorneys for Plaintiff,  
PEOPLE OF THE STATE OF CALIFORNIA

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SACRAMENTO

PEOPLE OF THE STATE OF  
CALIFORNIA, ex rel. EDWIN F. LOWRY,  
Director, CALIFORNIA DEPARTMENT OF  
TOXIC SUBSTANCES CONTROL,

Plaintiff,

v.

HELENA CHEMICAL COMPANY, a  
Delaware corporation,

Defendant,

No.

CONSENT AGREEMENT AND  
STIPULATION FOR ENTRY OF  
FINAL JUDGMENT; (PROPOSED)  
ORDER

WHEREAS, the Plaintiff, People of the State of California, ex rel. Edwin F. Lowry, director, California Department of Toxic Substances Control, has engaged in settlement negotiations with Helena Chemical Company, a Delaware Corporation, ( referred to as Settling Defendant or Helena). Plaintiff and the Settling Defendant (hereinafter collectively referred to as "the Parties") have agreed to settle the matter without litigation and by lodging this settlement simultaneously with a complaint. Plaintiff believes that the resolution of the violations alleged in the Complaint is fair and reasonable and fulfills the Plaintiff's enforcement objectives, that no further action is warranted under the Hazardous Waste Control Law concerning the specific

1 violations alleged in the Complaint except as provided pursuant to the Consent Judgment, and  
2 that this Consent Judgment is in the best interest of the general public.

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

4 **1. INTRODUCTION.**

5 In this action, Plaintiff filed a civil complaint (the "Complaint") in Sacramento  
6 County Superior Court against Settling Defendant regarding its management of hazardous  
7 wastes at three facilities in the State of California located at 101 West Carey Road, Brawley  
8 ("Brawley Facility"), 10821 W. 15th Avenue, Blythe ("Blythe Facility") and Highway 32 West,  
9 Transit 68, Chico ("Chico Facility"). The three facilities shall be collectively referred to as  
10 "Helena Facilities". The Parties settle this action on the terms set forth in this Consent  
11 Agreement and Stipulation for Entry of Final Judgment (hereinafter "Consent Judgment").

12 **2. COMPLAINT.**

13 The Complaint in this action alleges that Settling Defendant engaged in the  
14 storage of hazardous waste on-site for greater than ninety (90) days without a hazardous waste  
15 permit or other grant of authorization from DTSC and engaged in other hazardous waste  
16 management violations at the Helena Facilities.

17 **3. JURISDICTION AND VENUE.**

18 The Plaintiff and Settling Defendant agree that the Superior Court of California,  
19 County of Sacramento has subject matter jurisdiction over the matters alleged in this action and  
20 personal jurisdiction over the parties to this Consent Judgment. The Parties stipulate to the  
21 Superior Court, County of Sacramento as the venue of this action.

22 **4. SETTLEMENT OF DISPUTED CLAIMS.**

23 Settling Defendant expressly denies the allegations in the Complaint and the  
24 Consent Judgment. The Consent Judgment is not an admission by Settling Defendant regarding  
25 any issue of law or fact in the above-captioned matter or any violation of any law. The Parties  
26 enter into this Consent Judgment pursuant to a compromise and settlement of disputed claims  
27 set forth in the Complaint for the purpose of furthering the public interest. Settling Defendant  
28 waives its right to a hearing on any matter covered by the Complaint prior to the entry of this

1 Consent Judgment.

2 **5. CIVIL PENALTIES.**

3 5.1 Settling Defendant will pay **FOUR HUNDRED THOUSAND DOLLARS**  
4 **(\$400,000.00)** to the Department of Toxic Substances Control ("Department"). The **FOUR**  
5 **HUNDRED THOUSAND DOLLAR** amount shall consist of a civil penalty of **THREE**  
6 **HUNDRED TWENTY THOUSAND DOLLARS (\$320,000.00)** and a reimbursement  
7 payment of **EIGHTY THOUSAND DOLLARS (\$80,000.00)** for the Department's costs of  
8 investigation. No later than September 15, 2003, Settling Defendant shall pay a first installment  
9 of **TWO HUNDRED THOUSAND DOLLARS (\$200,000)**. On or before January 15, 2004,  
10 Settling Defendant shall pay a second installment of **TWO HUNDRED THOUSAND**  
11 **DOLLARS (\$200,000)**. All payments made to the Department of Toxic Substances Control  
12 pursuant to this Consent Judgment shall be by cashiers checks, made payable to the California  
13 Department of Toxic Substances Control and shall be mailed to: Cashier, TSCP Accounting,  
14 Department of Toxic Substances Control, P.O. Box 806, Sacramento, CA 95812-0806. Each  
15 check shall bear on its face the docket number of this case.

16 5.2 A photocopy of all checks and payments made pursuant to this Consent  
17 Judgment shall be sent, at the same time, to Deputy Attorney General Reed Sato, Office of the  
18 Attorney General, 1300 "I" Street, Suite 1101, P.O. Box 944255, Sacramento, CA 94244-2550.

19 5.3 In any future proceedings initiated after entry of the Consent Judgment  
20 which seek to enforce the provisions of Chapter 6.5 of the California Health and Safety Code  
21 against the Settling Defendant, the Parties agree that this Consent Judgment may be presented,  
22 subject to applicable evidentiary rules, as evidence of prior conduct by Settling Defendant.

23 **6. (Reserved)**

24 **7. MATTERS COVERED BY THIS CONSENT JUDGMENT.**

25 7.1 This Consent Judgment is a final and binding resolution and settlement of  
26 all claims, alleged violations or causes of action alleged by the Complaint in this matter or  
27 which could have been asserted by the Department of Toxic Substances Control based on the  
28 specific facts alleged in the Complaint against the Settling Defendant, its predecessors in

1 interest, parent, and their officers, directors, shareholders, partners, employees, representatives,  
2 and agents, and, as to the Chico Facility only, against Anne B. Whipple and West Industrial  
3 Park, Inc., including but not limited to, any claim for administrative or enforcement costs. The  
4 provisions of this Paragraph 7.1 become effective on entry of this Consent Judgment, but are  
5 expressly conditioned on the Settling Defendant's timely payment of the amounts set forth in  
6 Paragraph 5.1 and any penalties for late payment, if any; provided, however, that after full  
7 payment of such amounts, the provisions of this Paragraph 7.1 will remain in full force and  
8 effect.

9               7.2     Paragraph 7.1 shall have no effect on the ability of Plaintiff to enforce the  
10 terms of the Consent Judgment.

11              7.3     The matters that are addressed as set forth in Paragraph 7.1 are a  
12 "Covered Matter."

13              7.4     Any violations of law, statute, regulation or ordinance, including but not  
14 limited to Chapter 6.5 of the California Health and Safety Code, that are based on facts not  
15 expressly alleged by the Complaint are not resolved, settled, or covered by this Consent  
16 Judgment.

17              7.5     Settling Defendant covenants not to sue or pursue any civil or  
18 administrative claims arising out of or related to a Covered Matter against Plaintiff or agencies  
19 of the State of California except for the purpose of enforcing Plaintiff's obligations under this  
20 Consent Judgment.

21              7.6     "Covered Matter" as defined in Paragraph 7.1 and Paragraph 7.3 of this  
22 Consent Judgment does not include claims or causes of action, if any do exist, for (i)  
23 performance of cleanup, corrective action, or response action; (ii) cleanup costs incurred by  
24 Plaintiff at the Helena Facilities after the entry of this Consent Judgment, (iii) injunctive relief  
25 concerning or arising out of actual or threatened releases, spills, leaks, discharges, or disposal of  
26 hazardous substances or hazardous wastes caused or contributed to by Settling Defendant at  
27 locations at or around the Helena Facilities; or (iv) criminal penalties, civil penalties or damages  
28 concerning or arising out of actual releases, spills, leaks, discharges, or disposal of hazardous

1 wastes or hazardous substances caused or contributed by Settling Defendant at located at or  
2 around the Helena Facilities, and such claims or causes of action, if any, are reserved by  
3 Plaintiff. At this time, however, Plaintiff does not have any information of any such releases at  
4 locations at or around the Helena Facilities that pose a threat to human health or safety or the  
5 environment.

6 7.7 Except as provided by this Consent Judgment, the Parties reserve the  
7 right to pursue any claims not covered by this Consent Judgment and any defense to such  
8 reserved claims.

9 **8. EFFECT OF JUDGMENT.**

10 Except as expressly provided in this Consent Judgment, nothing in this Consent  
11 Judgment is intended nor shall it be construed to preclude Plaintiff or any state agency,  
12 department, board or entity or any local agency from exercising its authority under any law,  
13 statute, or regulation with regard to the Helena Facilities.

14 **9. PLAINTIFF IS NOT LIABLE.**

15 The Plaintiff shall not be liable for any injury or damage to persons or property  
16 resulting from acts or omissions by Settling Defendant, its directors, officers, employees, agents,  
17 representatives or contractors in carrying out activities pursuant to this Consent Judgment, nor  
18 shall the Plaintiff be held as a party to or guarantor of any contract entered into by Settling  
19 Defendant, its directors, officers, employees, agents, representatives or contractors in carrying  
20 out activities required pursuant to this Consent Judgment.

21 **10. INTERPRETATION.**

22 This Consent Judgment shall be deemed to have been drafted equally by all  
23 parties hereto. Accordingly, the Parties hereby agree that any and all rules of construction to the  
24 effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute  
25 concerning the terms, meaning, or interpretation of this Consent Judgment.

26 **11. NO WAIVER OF RIGHT TO ENFORCE.**

27 The failure of the Plaintiff to enforce any provision of this Consent Judgment  
28 shall in no way be deemed a waiver of such provision, or in any way affect the validity of this

1 Consent Judgment. The failure of the Plaintiff to enforce any such provision shall not preclude  
2 it from later enforcing the same or any other provision of this Consent Judgment. No oral  
3 advice, guidance, suggestions or comments by employees or officials of any Party regarding  
4 matters covered in this Consent Judgment shall be construed to relieve any Party of its  
5 obligations required by this Consent Judgment.

6 **12. REGULATORY CHANGES.**

7 Nothing in this Consent Judgment shall excuse Settling Defendant from meeting  
8 any more stringent requirements which may be imposed hereafter by changes in applicable and  
9 legally binding legislation or regulations.

10 **13. APPLICATION OF CONSENT JUDGMENT.**

11 This Consent Judgment shall apply to and be binding upon the Plaintiff, Settling  
12 Defendant, and the successors or assigns of each of them.

13 **14. AUTHORITY TO ENTER CONSENT JUDGMENT.**

14 Each signatory to this Consent Judgment certifies that he or she is fully  
15 authorized by the party he or she represents to enter into this Consent Judgment, to execute it on  
16 behalf of the party represented and legally to bind that party.

17 **15. CONTINUING JURISDICTION.**

18 The Court shall retain continuing jurisdiction to enforce the terms of this Consent  
19 Judgment.

20 **16. PENALTIES FOR NONCOMPLIANCE.**

21 Any Party may, by noticed motion or order to show cause, enforce the terms and  
22 conditions contained in this Consent Judgment. Failure to comply with the terms of this  
23 Consent Judgment shall subject a Party to further relief and for any attorneys fees, expert  
24 witness fees or costs reasonably incurred by the prevailing Party in enforcing the terms of this  
25 Consent Judgment. Settling Defendant shall be liable for a stipulated civil penalty of \$500 for  
26 each day that the payments required pursuant to Paragraph 5.1 are late. The Parties shall meet-  
27 and-confer prior to the filing of any motion to assess penalties pursuant to this Paragraph and  
28 shall negotiate in good faith in an effort to resolve any penalty assessments pursuant to this

Paragraph without judicial intervention.

**17. INTEGRATION.**

This Consent Judgment constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in the Consent Judgment.

**18. MODIFICATION OF CONSENT JUDGMENT.**

This Consent Judgment may be modified only upon written consent by the parties hereto and the approval of the court.

**19. ENFORCEMENT OF JUDGMENT.**

In the event that a Party brings an action to enforce any of the terms of this Consent Judgment, the prevailing party shall be entitled to its reasonable costs of enforcement, including attorney fees and costs, including any costs for expert witnesses or other costs of enforcement.

**20. LITIGATION EXPENSES AND FEES.**

Except as set forth in Paragraph 5.1 of this Consent Judgment with respect to the reimbursement of the Department's costs, each Party shall pay its own attorneys' fees, expert witness fees and costs, and all other costs of litigation incurred to date.

**21. COUNTERPART SIGNATURES.**

This Consent Judgment may be executed by the parties in counterpart, and when a copy is signed by an authorized representative of each party, the stipulation shall be effective as if a single document were signed by all Parties.

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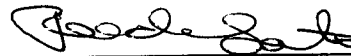
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1 IT IS SO STIPULATED:

2 FOR THE PLAINTIFF

3 Dated: ~~August~~ <sup>Sept. 4</sup>, 2003


BILL LOCKYER, Attorney General  
of the State of California  
RICHARD M. FRANK  
Chief Assistant Attorney General  
THEODORA P. BERGER  
Senior Assistant Attorney General -

7 

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Attorneys for Plaintiff, People of the State  
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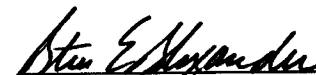
10 Dated: ~~August~~ <sup>Sept. 4</sup>, 2003

DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL

12 BY:   
ANTONETTE B. CORDERO,  
Chief Counsel  
Dept. of Toxic Substances Control

15 FOR THE SETTLING DEFENDANT

16 Dated: August 27, 2003

17   
STEVE ALEXANDER  
Vice President, Western Business  
Unit  
Helena Chemical Company

21 Approved as to Form:

24 Dated: August 25, 2003

22 GRAY CARY WARE & FREIDENRICH  
LLP

23   
ROBERT C. LONGSTRETH

Attorneys for Settling Defendant  
Helena Chemical Company

27 IT IS SO ORDERED,

28 Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT